

SUPREME COURT OF LOUISIANA

ORDER

Acting in accordance with Article V, Sections 1 and 5 of the Louisiana Constitution of 1974, and the inherent power of this Court, and considering the need to amend the Rules of this Court concerning consent discipline;

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT:

Louisiana Supreme Court Rule XIX, §20 be and is hereby repealed and reenacted to read as follows:

Section 20. Discipline by Consent.

A. Joint Motion.

At any time in the disciplinary process, a respondent lawyer and the Office of Disciplinary Counsel may file a Joint Motion for Consent Discipline. The joint motion shall be filed under seal with the Court. In the event formal charges have been filed, notice of the filing shall be given to the hearing committee to which the matter has been assigned, and all proceedings shall be stayed, pending disposition of the motion. The joint motion shall include stipulations of fact, conditional admissions of rules violated, the mental elements involved, the harm occasioned by the respondent's conduct, and the existence of any aggravating and mitigating factors. The lawyer shall acknowledge in the joint motion that he or she consents to the

agreed upon discipline. In the joint motion, the parties shall stipulate to the following:

- (1) The lawyer's consent is freely and voluntarily rendered; the lawyer is not being subjected to coercion or duress; the lawyer is fully aware of the implication of submitting the consent; and
- (2) The lawyer consents because the lawyer knows that if charges predicated upon the matters under investigation were filed, or if the pending proceeding were prosecuted, the lawyer could not successfully defend against them.

The parties may enter into any other agreements appropriate under the facts of the case.

B. Memorandum in Support of Consent Discipline.

The respondent and the Office of Disciplinary Counsel shall append to the joint motion a memorandum which references applicable standards under the *ABA Standards for Imposing Lawyer Sanctions* and prior jurisprudence which establishes a similar range of sanctions for similar misconduct.

C. Discretionary, Sealed Memorandum from Office of Disciplinary Counsel.

Within ten days of the filing of the joint motion for consent discipline, or upon request of the Court, the Office of Disciplinary Counsel may file a supplemental memorandum, under seal, further explaining why it would be appropriate for the Court to accept the consent discipline. Notwithstanding any other provision of law or court rule, this sealed memorandum shall be available only to the Court, shall remain confidential, and shall not be provided to the respondent lawyer regardless of whether the discipline by consent is accepted or rejected by the Court.

D. Discontinuance of Jurisdiction.

Approval of the consent discipline by the Court shall divest the hearing committee of further jurisdiction and no report need be prepared in such cases.

E. Order of Discipline.

If the Court is of the view that the consent discipline is appropriate, the Court shall enter a summary order disciplining the lawyer by consent. In the event the Court enters an Order of Consent Discipline, the entire record shall become public, unless otherwise ordered by the Court. However, any sealed memorandum provided to the Court by the Office of Disciplinary Counsel in accordance with subpart C shall remain

confidential, shall be available only to the Court, and shall not be provided to the respondent lawyer.

F. Rejection of Consent Discipline.

If the requested discipline is rejected by the Court, the joint motion and any conditional admissions shall be considered withdrawn. In this event, any conditional admissions made in the joint motion cannot be used against the respondent in any subsequent proceedings. The joint motion shall remain sealed and shall not be disclosed or made available for use in any other proceeding except upon order of the Court. The Court Order in this instance shall be a matter of public record, but the respondent lawyer shall not be identified.

These rules shall become effective upon signing and shall remain in full force and effect thereafter, until amended or changed through future orders of this Court.

New Orleans, Louisiana, this _____ day of _____, 2003.

FOR THE COURT:

Pascal F. Calogero, Jr., Chief Justice